

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 12, 2006

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

Re: **SYNAGRO OF TEXAS-CDR, INC.**
TCEQ DOCKET NO. 2005-0324-SLG

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Motion to Suspend and Revoke Permit No. 04674 in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Humphrey".

Scott A. Humphrey, Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

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ON ENVIRONMENTAL
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TCEQ DOCKET NO. 2006-0324-SLG

PETITION TO SUSPEND AND	§	BEFORE THE
REVOKE PERMIT NO. 04674 TO	§	TEXAS COMMISSION
SYNAGRO OF TEXAS-CDR FILED	§	ON ENVIRONMENTAL
BY BARBARA HOFFMAN ET AL	§	QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO MOTION TO SUSPEND
AND REVOKE PERMIT NO. 04674 TO SYNAGRO OF TEXAS-CDR**

TO THE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY :

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files the following response to the Motion to Suspend and Revoke concerning the above-referenced matter.

I. BACKGROUND

Barbara Hoffman, Alfred Hoffman, Belita Hoffman and Kenneth Witte (Movants) have filed a petition with the TCEQ to suspend and revoke Permit No. 04674, which allows Synagro of Texas-CDR (Synagro) to land apply Class B sewage sludge in Colorado County, Texas. The Movants point out that Synagro submitted three similar applications to the TCEQ in August 2003, including the permit application that is the subject of this motion. All three applications involve the same landowner, and two applications are located in Colorado County while the third is located in Wharton County. Protestants in the Wharton County permit application requested and were granted a contested case hearing and are currently awaiting a Commission hearing for a final decision on the application. Synagro withdrew one of the Colorado County applications before an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH) conducted a hearing on the merits. The other Colorado County application settled through the TCEQ mediation process. The case was dismissed from the SOAH docket and

remanded to the Executive Director (ED) of the TCEQ, who issued the final permit. The Movants seek suspension and revocation of this permit.

II. DISCUSSION

According to the Movants, the primary problem common to all the permit applications concerns the agronomic rates. With respect to Permit No. 04764, the application contains blank lines in the agronomic rate calculation pages, indicating that Synagro did not subtract the amount of plant available nitrogen in the soil from the amount of nitrogen recommended to achieve their specific yield goal. This results in an excess of nitrogen which cannot be utilized by the crop. If the plant cannot use the nitrogen, it will either run off the site or leach into the groundwater causing contamination of the nearby Colorado River and the aquifer below the site from which households draw their water. The Movants also raise two other issues: (1) Synagro has not submitted a Nutrient Management Plan; and (2) the yield goals submitted by Synagro are unrealistic.

OPIC agrees in part with the Movants. Specifically, if the ED concurs with the Movants and is aware that the agronomic rates endanger human health or safety or the environment to such an extent that permit termination is necessary to prevent further harm, then the permit should be suspended. 30 Tex. Admin. Code (TAC) § 305.66(a)(5). Moreover, OPIC agrees that a hearing should be held to determine whether the permit should be revoked. 30 TAC § 305.68(a). However, it would be premature for OPIC or any other party to the hearing to assume that the permit should be revoked.

The Movants refer to the Wharton application, which was previously considered by the Commission.¹ In that case, after the ALJ issued a Proposal for Decision recommending the

¹ See SOAH Docket No. 582-05-5610; TCEQ Docket No. 2005-0180-SLG

permit be granted, Synagro informed the ALJ and the Commission that the agronomic rates in the proposed permit were not accurately calculated. In that case, the Commission concluded it was more appropriate to remand the case to SOAH to determine the appropriate agronomic rate rather than to deny the permit application altogether and make Synagro begin the process again.²

In this case, the permit has already been issued. The substantive issue regarding the appropriate agronomic rate remains the same, but different procedures may apply. In addition to granting the motion to suspend the existing permit, OPIC also recommends that the ED and the Commission consider amending the permit for good cause pursuant to 30 TAC § 305.62(d)(2) based on currently known defects in the existing permit. The revocation proceedings and amendment proceedings should be consolidated. Such consolidated proceedings would allow the Commission to consider all three issues raised by the movants: agronomic rates; the submission of a Nutrient Management Plan; and a review of the yield goals. The Commission can then determine whether the permit should be reinstated with amendments or revoked.

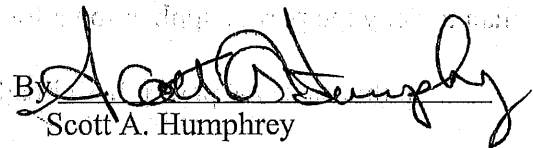
III. CONCLUSION

OPIC recommends the Commission suspend Synagro's existing Permit No. 04674. In addition, OPIC recommends the Commission and the Executive Director consider amending the permit for good cause pursuant to 30 TAC § 305.62(d)(2). Finally, OPIC recommends the revocation proceedings and amendment proceedings be consolidated.

² The evidentiary hearing on the agronomic rates for the Wharton County application will take place on October 3-4, 2006 in the SOAH offices in Austin.

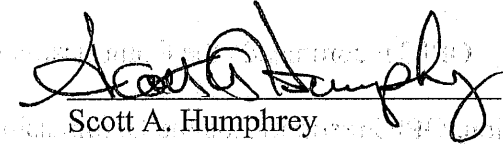
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2006, the original and eleven copies of the Office of Public Interest Counsel Response to Motion to Suspend and Revoke was served upon the Chief Clerk of the TCEQ and a true and correct copy on all persons listed on the attached Mailing List via hand delivery, Intra-Agency Mail or by deposit in the U.S. Mail.


Scott A. Humphrey

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